

State of New Hampshire Banking Department

In re the Matter of:)
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)
State of New Hampshire Banking)
)
) Order to Show Cause
Department,)
)
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Petitioner,)
)
)
and)
)
)
Summit Mortgage LLC (d/b/a SMT)
)
)
Mortgage), Richard S. Fedeles, Richard)
)
)
L. Bready, and Peter Rothschild,)
)
)
Respondents)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.

Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the

1 provisions of the Chapter.

2 Pursuant to RSA 397-A:21, the Commissioner has the authority to
3 suspend, revoke or deny any license and to impose administrative penalties
4 of up to \$2,500.00 for each violation of New Hampshire banking law and
5 rules.

6 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
7 that is or may be an unfair or deceptive act or practice under RSA 358-A and
8 exempt under RSA 358-A:3,I or that may violate any of the provisions of
9 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
10 Commissioner may hold hearings relative to such conduct and may order
11 restitution for a person or persons adversely affected by such conduct. The
12 Commissioner may utilize all remedies available under the Consumer
13 Protection Act.

14 **NOTICE OF RIGHT TO REQUEST A HEARING**

15 The above named Respondents have the right to request a hearing on
16 this Order to Show Cause, as well as the right to be represented by counsel
17 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
18 Any such request for a hearing shall be in writing, and signed by the
19 Respondent or the duly authorized agent of the above named Respondent, and
20 shall be delivered either by hand or certified mail, return receipt
21 requested, to the Banking Department, State of New Hampshire, 53 Regional
22 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
23 10 days of the Department's receipt of the request. If the Respondent fails
24 to appear at the hearing after being duly notified, such person shall be
25 deemed in default, and the proceeding may be determined against the Respondent

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within
4 30 calendar days of receipt of such order or reach formal settlement with the
5 Department within that time frame, then such person shall likewise be deemed
6 in default, and the orders shall, on the thirty-first day, become permanent,
7 and shall remain in full force and effect until and unless later modified or
8 vacated by the Commissioner, for good cause shown.

9 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

10 The Staff Petition dated January 2, 2009 (a copy of which is attached
11 hereto) is incorporated by reference hereto.

12 **ORDER**

13 WHEREAS, finding it necessary and appropriate and in the public
14 interest, and consistent with the intent and purposes of the New Hampshire
15 banking laws, and

16 WHEREAS, finding that the allegations contained in the Staff Petition,
17 if proved true and correct, form the legal basis of the relief requested,

18 It is hereby ORDERED, that:

- 19 1. Respondent Summit Mortgage LLC (d/b/a SMT Mortgage)
20 ("Respondent Summit Mortgage") shall show cause why penalties
21 in the amount of \$7,500.00 should not be imposed against it;
22 2. Respondent Richard S. Fedele ("Respondent Fedele") shall show
23 cause why penalties in the amount of \$10,000.00 should not be
24 imposed against him;
25 3. Respondent Richard L. Bready ("Respondent Bready") shall show

1 cause why penalties in the amount of \$10,000.00 should not be
2 imposed against him;

3 4. Respondent Peter Rothschild ("Respondent Rothschild") shall
4 show cause why penalties in the amount of \$10,000.00 should
5 not be imposed against him;

6 5. The above named Respondents shall show cause why, in addition
7 to the penalties listed in Paragraphs 1 through 4 above, the
8 \$500.00 examination fee should not be paid to the Department;

9 6. The above named Respondents shall be jointly and severally
10 liable for the above amounts alleged in Paragraphs 1 through
11 5 above;

12 7. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 6 above,
14 Respondent Summit Mortgage's license should not be revoked.

15 It is hereby further ORDERED that:

16 8. Along with the administrative penalties listed for the above
17 named Respondents, the outstanding sum of \$500.00 shall be
18 immediately paid; and

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22 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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1 9. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s).

5 SIGNED,

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7 Dated: 01/02/09

 /s/
 PETER C. HILDRETH
 BANK COMMISSIONER

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-046
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State of New Hampshire Banking)
) Staff Petition
Department,)
) January 2, 2009
Petitioner,)
)
and)
)
Summit Mortgage LLC (d/b/a SMT)
)
Mortgage), Richard S. Fedele, Richard)
)
L. Bready, and Peter Rothschild,)
)
Respondents)

I. STATEMENT OF ALLEGATIONS

The Staff of the Banking Department, State of New Hampshire (hereinafter "Department") alleges the following facts:

Facts Common on All Counts:

1. Respondent Summit Mortgage LLC (d/b/a SMT Mortgage) (hereinafter "Respondent Summit Mortgage") was licensed as a Mortgage Banker from at least March 24, 2003 until its license expired on December 31, 2007.
2. Respondent Richard S. Fedele (hereinafter "Respondent Fedele") was the President, Chief Executive Officer and 47.5% owner of Respondent Summit Mortgage, when licensed by the Department.
3. Respondent Richard L. Bready (hereinafter "Respondent Bready") was the Manager and 33.25% owner of Respondent Summit Mortgage, when licensed by the Department.
4. Respondent Peter Rothschild (hereinafter "Respondent

1 Rothschild") was the Manager and minority owner of Respondent
2 Summit Mortgage, when licensed by the Department.

3 Violation of RSA 397-A:10,III Failure to Inform Commissioner of Office

4 Closure (1 Count):

5 Violation of RSA 397-A:10-a,I Failure to Surrender License (1 Count):

6 5. Paragraphs 1 through 4 are hereby realleged as fully set forth
7 herein.

8 6. On December 11, 2007, the Department received information that
9 Respondent Summit Mortgage had closed its operations sometime in
10 October 2007.

11 7. A review of Respondent Summit Mortgage's website disclosed that
12 the company was winding down its operations effective October
13 11, 2007.

14 8. The Department attempted to contact Respondent Summit Mortgage
15 on December 11, 2007 and December 19, 2007; all telephone
16 numbers for Respondent Summit Mortgage were not in proper
17 working service.

18 9. Respondent Summit Mortgage's website further disclosed that all
19 inquiries concerning the company should be addressed to Attorney
20 John Drew (hereinafter "Attorney Drew").

21 10. The Department sent an inquiry to Attorney Drew on December 20,
22 2007.

23 11. On or about January 11, 2007, the Department received a response
24 from Attorney Drew, which indicated that Respondent Summit
25 Mortgage had stopped accepting new loan applications and

1 terminated most of its employees on October 11, 2007.

2 12. Therefore, Respondent Summit Mortgage failed to notify the
3 Department it was closing its offices.

4 13. As a result, Respondent Summit Mortgage failed to surrender its
5 license.

6 **Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):**

7 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**
8 **Department Inquiries (1 Count):**

9 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
10 herein.

11 15. The Department conducted an examination of Respondent Summit
12 Mortgage on June 18, 2007, while Respondent Summit Mortgage was
13 still licensed with the Department.

14 16. On October 5, 2007, the Department mailed the report of
15 examination and invoice for \$500.00 to Respondent Summit
16 Mortgage, via U.S. Certified Mail Return Receipt requested, which
17 Respondents received on October 9, 2007.

18 17. The above named Respondents failed to respond to the October 5,
19 2007 correspondence from the Department.

20 18. The Department, via U.S. mail, mailed a second notice on November
21 6, 2007 and a third notice on December 7, 2007.

22 19. The above named Respondents did not respond to any of the three
23 notices for payment of the \$500.00 invoice.

24 20. To date, the above named Respondents still owe the \$500.00
25 examination fee for the one day examination.

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The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in Paragraphs 1 through 20 as fully set forth herein.
2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
3. RSA 397-A:10,III provides that licensees shall provide written notice to the Department of any proposed closing of any licensed office no later than ten (10) business days prior to the effective date of such change. Each of the above named Respondents violated this statute on at least one occasion as alleged above.
4. RSA 397-A:10-a,I(a) provides that a licensee who ceases to engage in the business of a mortgage banker or mortgage broker at any time during a license year for any cause shall surrender such license in person or by registered or certified mail to the Commissioner within 15 calendar days of such cessation, and shall cause to be published in a newspaper of general circulation in the licensee's market area a notice to such effect. Each of the above named Respondents violated this statute on at least one occasion as alleged above.
5. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above named Respondents violated this provision on at least one

1 occasion as alleged above. To date, the above named Respondents
2 have failed to pay the \$500.00 examination invoice.

3 6. RSA 397-A:13,VI provides that any officer, owner, manager or agent
4 of any licensee shall reply promptly in writing, or other
5 designated form, to any written inquiry from the Department.
6 Respondent Fedele, Respondent Bready and Respondent Rothschild
7 each violated this provision on at least one occasion as alleged
8 above.

9 7. RSA 397-A:18,I provides that the Department may issue a complaint
10 setting forth charges whenever the Department is of the opinion
11 that the licensee or person over whom the Department has
12 jurisdiction, has violated any provision of RSA Chapter 397-A or
13 orders thereunder.

14 8. RSA 397-A:21,IV provides that any person who, either knowingly or
15 negligently, violates any provision of RSA Chapter 397-A, may
16 upon hearing, and in addition to any other penalty provided for
17 by law, be subject to an administrative fine not to exceed
18 \$2,500.00, or both. Each of the acts specified shall constitute
19 a separate violation, and such administrative action or fine may
20 be imposed in addition to any criminal penalties or civil
21 liabilities imposed by New Hampshire Banking laws.

22 9. RSA 397-A:21,V provides that every person who directly or
23 indirectly controls a person liable under this section, every
24 partner, principal executive officer or director of such person,
25 every person occupying a similar status or performing a similar

1 function, every employee of such person who materially aids in the
2 act constituting the violation, and every licensee or person acting
3 as a common law agent who materially aids in the acts constituting
4 the violation, either knowingly or negligently, may, upon notice
5 and opportunity for hearing, and in addition to any other penalty
6 provided for by law, be subject to suspension, revocation, or
7 denial of any registration or license, including the forfeiture of
8 any application fee, or the imposition of an administrative fine
9 not to exceed \$2,500, or both. Each of the acts specified shall
10 constitute a separate violation, and such administrative action or
11 fine may be imposed in addition to any criminal or civil penalties
12 imposed.

13 **III. RELIEF REQUESTED**

14 The staff of the Department requests the Commissioner take the following
15 action:

- 16 1. Find as fact the allegations contained in section I of this Staff
17 Petition;
- 18 2. Make conclusions of law relative to the allegations contained in
19 section II of this Staff Petition;
- 20 3. Pursuant to RSA 397-A:17, order each of the above named
21 Respondents to show cause why their license should not be revoked;
- 22 4. Assess fines and administrative penalties in accordance with RSA
23 397-A:21, for violations of Chapter 397-A, in the number and amount
24 equal to the violations set forth in section II of this Staff
25 Petition; and

5. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/

Maryam Torben Desfosses
Hearings Examiner

01/02/09
Date